service by resellers. 40/ These mechanisms are required by the nondiscrimination provision of Section 251(c)(4)(B) and are necessary if resale is to be a viable option for competitors as a practical matter. They are similar to the operational support services required in connection with network elements obtained under Section 251(c)(3). Because operational support issues apply to several sections of the Act we discuss them more fully in Section VIII, below. **[¶ 91]**

B. The ILECs Must Not Be Allowed to Create Loopholes in the Availability of Retail Services for Resale.

The plain language of Section 251(c)(4) of the Act is clear: with a single exception, "any telecommunications service that the [incumbent LEC] provides at retail to subscribers who are not telecommunications carriers" must be made available for resale. Section 251(c)(4)(B) also provides that ILECs may not "prohibit" or "impose unreasonable or discriminatory limitations on the resale of such telecommunications services."

The FCC must make it clear in the rules adopted in this proceeding that all ILEC offerings, whether they are time-limited, promotional, discounted, or otherwise unusual, must be made available for resale. If the FCC does not make clear the broad scope of this obligation, ILECs will undoubtedly try to frustrate the ability of other carriers to provide a competing offering by imposing unreasonable restrictions on resale. The Act contains no limitation that would justify denial of resale of any offering. 41/

40/ Such mechanisms are equally important for unbundled network elements, as we discuss in Section VIII, below.

41/ The Commission asks for comment on a number of specific state policies governing local resale. Notice, ¶ 177. Many of these policies were adopted before passage of the Act. The FCC should adopt rules that make clear the ILEC's statutory obligations, and should not permit any state to allow a restriction on resale other than the one permitted under Section 251(c)(4).

The Act contains only one exception to the blanket resale requirement: state commissions may permit incumbent LECs to limit a reseller's ability to resell a service that is available only to one category of customers to that same category of customers. 42/ As the Commission correctly observed, this exception was intended to address the limited circumstance in which for public policy reasons, an ILEC provides basic local exchange service to residential customers at a rate that is deliberately set below the rate offered to other customers. 43/ **[¶ 176]**

If an incumbent LEC seeks to impose a restriction on resale pursuant to that exception, it must first obtain a state commission finding that such a restriction satisfies the requirements of Section 251(c)(4)(B). Any restrictions in the current ILEC tariffs on resale of services offered to retail customers therefore are automatically void and unenforceable unless and until the ILEC has obtained state commission authority to restrict resale in a particular instance. The FCC should make it clear that this limited exception is not a basis for ILEC attempts to circumscribe the ability of competitors to resell; rather it is intended to protect a system under which residential customers pay lower rates than business customers for public policy reasons.

The FCC must also expressly close loopholes that some ILECs already have tried to create. For example, the FCC must make it clear that discounted and promotional offerings are "telecommunications services" that must be made available for resale at wholesale rates. The fact that an offering is discounted or

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42/ "...a State commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." 47 U.S.C. § 251(c)(4)(B).

43/ Notice, ¶ 176.

promotional does not change the ILEC's obligation to provide it at a wholesale rate. As Congress recognized in applying wholesale pricing to all services subject to resale (including services that receive any subsidy), the starting point for calculating a wholesale rate is the retail rate, because that is the rate that the reseller is by definition competing against. Exempting discounted, bundled, or promotional rates from resale at wholesale rates would permit ILECs to block resale-based competition by continually offering customers special deals below the "regular" rates. 44/ **[¶ 175]**

Another strategy for thwarting resale-based competition is withdrawal of ILEC service offerings. An example was US West's attempt to withdraw its Centrex offerings while continuing to provide service to existing Centrex customers. No ILEC should be allowed to withdraw a service unless it is also prepared to shift existing customers of that service to a new service option.

The Commission also should make clear that an ILEC may not adopt a "bona fide request" process for obtaining access to retail services at wholesale rates. Section 251(c)(4) requires all services to be available for resale, without requiring a carrier to undergo a bona fide request process first. A bona fide request process is simply a reason for delay.

44/ It is irrelevant whether or not a service is priced below or above cost (however defined). The statute does not carve out an exception for "below cost" services, even though some ILECs have attempted to fence these services off from resale, even after passage of the Act. If the ILECs were correct in fencing off "below-cost" services from resale, then there would have been no need for the sole exception to the resale obligation in Section 251(c)(4) (which, as noted above, addressed resale of subsidized services). More fundamentally, when a LEC allows resale of a below-cost service, it still receives the same revenue it received when the customer was the LEC's own customer. The only lost revenues are those associated with retail costs, which by definition the LEC no longer incurs. ILECs also continue to receive access revenues in connection with Section 251(c)(4) resale, so that any support mechanisms that may be embedded in those rates will still flow to the LEC.

These examples show why the FCC must establish strong national requirements for resale. They also illustrate some of the practical difficulties of service resale. The reseller ultimately is at the mercy of the ILEC's decisions regarding pricing and service design and calling area. If an ILEC changes any of those characteristics of a service, the reseller has little practical choice but to mirror that change. Thus, it is clear that in addition to providing service resale, ILECs must be required to make unbundled network elements available in a platform configuration, as discussed in Section IV, above. Only then will competitors not be at the mercy of the ILECs in their ability to provide specific services, at rates that they (not the ILEC they compete with) can establish.

C. Wholesale Rates Must Exclude All Retail-Related and Other Avoided Costs

Congress plainly intended that service resale be a viable option for local entry. Thus, it took care to specify that retail services be offered at a wholesale rate, and that the rate exclude all retail-related and other avoided costs. 47 U.S.C. § 252(d)(3). It is critical that the Commission establish a pricing methodology that will govern the calculating of wholesale rates.

The FCC should adopt as a standard that ILECs must subtract from retail rates the direct retail-related costs associated with those retail services as well as other avoided costs. The FCC should specify the USOA accounts that reflect these costs. 45/ In addition, the ILECs should subtract a portion of the shared,

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45/ All ILEC costs associated with the following Uniform System of Accounts (USOA) categories should be excluded as avoided costs: Uncollectibles; Marketing Expense; Customer Service Expense; and Billing Expense. That portion of the following accounts which is directly associated with the ILEC's retail operations also should be considered avoided cost: Network Support Expense; Operator Systems Expense; Testing Expense; Plant Operations Administration Expense. Call Completion Services; and Number Services

common and general overhead costs that are associated with the ILEC's provision of its own retail services. 46/

It is essential that the FCC specify the USOA accounts that must be excluded in calculating wholesale rates. This is important, first, because these costs clearly are retail-related costs. Second, if these accounts are not specified by the FCC, there will be battles before every state commission about what costs are considered retail-related. These disputes will substantially delay the availability of wholesale rates, will impose significant costs on competing carriers who must fight these battles in every state, and will yield a patchwork of wholesale rates that create competitive opportunities in some states but not in others. 47/

The FCC also should require that ILECs exclude all retail-related costs from wholesale rates, not just those costs that the ILECs actually avoid as a result of implementing a carrier resale program. Since passage of the Act ILECs have argued, and undoubtedly will continue to argue, that their actual avoided costs are very low, making the wholesale rate close to the retail rate. This approach would foil the Congressional goal to make resale a workable marketplace option. Congress's purpose in creating a wholesale rate was to ensure that competitors

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46/ That portion of the following USOA accounts which is associated with the ILEC's retail operations should be excluded as avoided costs: General Support Expense; Depreciation Expense; Total Executive and Planning Expense; Total General and Administrative Expense; Operating Federal Income Taxes; Operating State and Local Income Taxes; Operating Other Taxes; Other Interest Deductions; and Total Returns.

47/ The FCC should make it clear that all costs associated with retail functions should be excluded from wholesale rates, not just those listed as examples in Section 252(d)(3) of the Act. Section 252 (d)(3) requires wholesale rates to be set "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." (emphasis added).

could successfully compete because they would not have to reimburse the ILECs for retail costs that the competitors themselves would be incurring.

The FCC also should make "add-backs" of costs onto wholesale rates presumptively prohibited. The presumption should be that ILECs cannot increase the wholesale rate to reflect any costs of provisioning to carriers. In establishing the methodology for calculating wholesale rates, Congress only specified exclusion from retail rates of costs associated with retail functions. It did not permit ILECs to recover any other costs in wholesale rates, including costs of provisioning service to competing carriers.

Finally, the same discount level should apply to all ILEC services. This rule is necessary to make wholesale service available easily as contemplated by the Act. Otherwise, ILECs will try to prevent resale by "gaming" their product lines. Resale will fail if states or the Commission are embroiled in extended proceedings over each and every LEC retail offering. Indeed, the practical result might be to prevent ILECs themselves from easily introducing new retail services. It must be simple and quick to determine the wholesale rate for any ILEC service.

The FCC asks for comment on the relevance of wholesale rates adopted in several state proceedings. Notice at para 183. Existing wholesale rates and discounts adopted by several states should not be used as a model, because they were, for the most part, adopted without regard to the statutory requirements of the 1996 Act. Any such rates must be revised to conform with the Act's pricing and other requirements. **[¶ 183]**.

VI. INTEREXCHANGE ACCESS MUST BE PRICED AT ECONOMIC COST.

It is critical that competitive telecommunications carriers obtain access to incumbent LEC networks under Section 251 to originate and terminate

calls on the same basis as the ILECs do themselves. This mandate is all the more critical as a prerequisite to grant of any RBOC applications to provide in-region interLATA service.

It is commonly understood that current interstate access rates are well above economic cost. 48/ Yet economic cost is the price the RBOCs would themselves face in providing their own long distance services. Although the Act mandates that the RBOC provide long distance through a separate subsidiary, and that the subsidiary buy access at tariffed rates, the only cost that comes out of the RBOCs' pockets are the economic costs of access. Prior to RBOC entry into the interLATA market, this great disparity in access rates must be eliminated. If it is not, RBOC entry will have serious competitive consequences.

The plain language of the Act requires ILECs to provide interconnection (access) to all carriers, including interexchange carriers, at cost-based rates. Section 251(c)(2) provides an affirmative obligation on the part of the incumbent LEC to interconnect with any requesting telecommunications carrier for the transmission and routing of telephone exchange and exchange access service.

A "telecommunications carrier" is defined as any carrier offering telecommunications service (except aggregators). 47 U.S.C. § 153(a)(49). By definition, then, a "telecommunications carrier" includes all carriers -- whether offering long distance service, mobile service, or local exchange and exchange access (with the sole exception of "aggregators"). "Exchange access" is defined as the offering of access to telephone exchange services or facilities for the purpose of originating or terminating toll calls. Id. at Section 153(a)(40). Thus, Section 251(c)(2) includes interconnection between a telecommunications carrier's long

48/ See Section II, supra. See also Notice ¶¶ 3, 146, 165.

distance network and an incumbent LEC's access network in order to originate and terminate toll calls, just as it includes interconnection between any other carrier's facilities and those of an incumbent LEC. 49/

The Act also permits interexchange carriers to employ unbundled network elements to provide access services to themselves and to other carriers, as the FCC tentatively concluded in the Notice. 50/ The Act does not restrict the types of telecommunications carriers that are entitled to request unbundled network elements, nor does it limit the types of telecommunications services that can be provided over those elements. Transport, moreover, must be unbundled from switching, loop, and other services pursuant to the terms of the competitive checklist. See 47 U.S.C. § 271(c)(2)(B)(iv)-(vi). As the FCC proposed, unbundled transport may be used to terminate and originate interexchange calls as well as for other purposes. 51/

Thus, whether access is deemed to be interconnection, or purchased as unbundled network elements, it must be priced "based on cost . . . of providing the interconnection or network element." 47 U.S.C. § 252(d)(1). 52/ The rate established may include a reasonable profit, and shall be nondiscriminatory. Id. In defining cost, the Act provides that cost be determined "without reference to a rate-of-return or other rate-based proceeding." Id. This language requires

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49/ In addition to the duty to interconnect, Section 251(c)(2) requires incumbent LECs to provide interconnection at any "technically feasible" point, and forbids the incumbent LEC from discriminating against any nonaffiliated carrier that seeks interconnection.

50/ Notice, ¶ 165. See also id. ¶ 120.

51/ Notice, ¶ 165. See also id. ¶¶ 105-106.

52/ Section 251(c)(2) and (3) both reference this cost standard.

economic-cost pricing, not traditional, fully distributed rate-of-return pricing, as discussed in Section III. above. 53/

Section 271 clearly contemplates that RBOC exchange access rates must be set at cost before the RBOCs can enter the in-region interLATA market. First, the competitive checklist of Section 271 states that the Section 251 and 252 requirements of cost-based rates for interconnection (including access) and unbundled network elements must be in place before any application for RBOC entry can be granted. See 47 U.S.C. § 271(c)(2)(B).

Section 271 also requires the Commission to determine that grant of an RBOC application to provide in-region interLATA service must be in the public interest. See 47 U.S.C. § 271(d)(3)(C). This public interest test cannot be satisfied in an environment in which the RBOCs are receiving (and their competitors are paying) access charges that are many times cost. Not only is that an intolerable burden on those telecommunications companies that provide long distance while utilizing ILEC-provided access. It also produces anticompetitive market distortions and creates uneconomic price signals in the exchange access market. A system that would allow some carriers to buy interconnection and network elements at cost, while forcing others to buy out of access tariffs that are many times the ILECs' economic costs, is not sustainable as a policy or legal matter.

Thus, even if the RBOCs were correct in contending that Sections 251 and 252 do not require nondiscriminatory, cost-based access rates (which they are not), the public interest test of Section 271 clearly does. It would be untenable for the RBOCs to begin to provide interLATA services, with their own access inputs at economic cost, while their direct competitors are paying many times that for the

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53/ Similarly, Section 254(e) requires that any universal service-type support be "explicit" and set at a level "sufficient to achieve universal service goals." Access/interconnection charges must move to cost under this provision as well.

same input. Without a drop in access prices to cost, existing competition in the interLATA market could be substantially impeded and the Section 271 public interest test, therefore, could never be satisfied.

VII. THE COMMISSION SHOULD ADOPT A STRICT VIEW OF EXEMPTIONS, SUSPENSIONS AND MODIFICATIONS UNDER SECTION 251(f).

[Notice, Section II.F., ¶¶ 260-61]

The Commission notes that under Section 251(f)(1) rural telephone companies are exempt from complying with Section 251(c) until such company receives a "bona fide request for interconnection, services, or network elements" under Section 251. Further, under Section 251(f)(2), any local exchange carrier with less than two percent of the nation's subscriber lines may petition for a suspension or modification of the requirements outlined in Sections 251(b) and 251(c). The State commission in each instance must address the petition or the bona fide request. The FCC should clarify in its national rules that the requirements of Sections 251(b) and 251(c) must be implemented for rural carriers to the greatest extent possible. **[¶ 260]**

Under Section 251(f)(2), a local exchange carrier may be granted a suspension or modification of the requirements of Section 251(b) or (c) only if the State determines that such suspension or modification --

> (A) is necessary --
>
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
>
> (ii) to avoid imposing a requirement that is unduly economically burdensome;

> (iii) to avoid imposing a requirement that is technically infeasible; and
>
> (B) is consistent with the public interest, convenience, and necessity 54/

This requirement was adopted so that local exchange carriers could seek suspensions or modification of the requirements, primarily due to timing problems. For example, although the Act requires ILECs to implement number portability, certain ILECs may need more time to implement this requirement than others. Nonetheless, it is vital that the Commission clarify that the 1996 Act was adopted

> to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to all Americans by opening all telecommunications markets to competition 55/

Congress determined that competition is the national policy and must be implemented everywhere. The Commission cannot allow rural ILECs to thwart Congressional intent by including indefinitely their Section 251 and 252 obligations.

[¶¶ 260-61]

Under Section 251(f)(1), rural telephone companies are exempt from complying with Section 251(c) until they receive a "bona fide request." The rural telephone companies pleaded with Congress to exempt them from these requirements because competitors would not be interested in expanding their facilities to rural areas. They stated that they should not be required to go through various proceedings since no one would be interested in competing in rural America. They wanted to be exempt from the Act's pro-competitive requirements. Congress

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54/ 47 U.S.C. § 251(f)(2).

55/ Conference Report at 1 (emphasis added).

exempted these carriers so that they would not be required to institute these requirements until another carrier requested such interconnection, services or network elements.

Congress did not intend, however, for rural telephone companies to be excused from these requirements if a carrier wished to compete with the rural telephone company. As Mr. Boucher stated in the debate in the House of Representatives:

> Rural telephone companies were exempted [under H.R. 1555] because the interconnection requirements of the checklist would impose stringent technical and economic burdens on rural companies, whose markets are in the near future unlikely to attract competitors.
>
> It was never our intention, however, to shield these companies from competition, and it is in that context that the language the gentlemen and I have agreed to is pertinent ***. 56/

The Commission must clarify in its national guidelines that exemptions and modifications of the requirements of Sections 251(b) and 251(c) for any ILEC, including rural telephone companies, must be read narrowly and be limited to a matter of timing issues, if limited at all. The consumers in rural America should be given a choice of carriers and should receive the benefits of competition. This is particularly necessary today and will continue in the future due to the introduction of new technologies, such as PCS, which will allow competition to spread to all areas of the country. The benefits of competition will be ensured only if the Commission enforces the requirements of Sections 251(b) and (c) for all ILECs. **[¶¶ 260-61]**

56/ Congressional Record, pp. H8454.

VIII. THE FCC MUST MANDATE OPERATIONAL SUPPORT FOR UNBUNDLED ELEMENTS AND RESALE.

A. Automated, Nondiscriminatory Operational Support Mechanisms are Critical If Competition is to Develop.

The implementation of automated, nondiscriminatory operational support mechanisms is critical to both unbundled network elements and service resale. This is where the rubber hits the road -- where incumbent LECs can totally frustrate and even block new entry simply by refusing to install automated, nondiscriminatory systems for ordering, installing, maintaining, repairing and billing for competitive carriers.

From a consumer point of view, local competition should bring more choices, and not at the cost of confusion and inconvenience. It should be as easy to switch local service providers as it is today to switch long distance providers. Switching should be transparent to the consumer, moreover. The reality will be far different, however, without regulatory intervention.

The FCC therefore must affirmatively require ILECs to develop and implement the operational support mechanisms that their competitors require in order to provide the same quality of service that the customers of the ILEC receives, whenever that service is provided over incumbent LEC facilities or through resale of ILEC retail services. The ILECs lack the incentives to make this happen in the absence of a firm regulatory mandate.

Delay in accomplishing design and implementation of operational support mechanisms are inevitable, even in the presence of a regulatory requirement, unless these mechanisms are expressly required as a part of Section 251. The FCC also should make clear that it cannot grant any application for RBOC interLATA entry under Section 271 until the RBOC has demonstrated that it has met this requirement. The RBOC must demonstrate that automated

operational support mechanisms are in place, fully functioning, and proven nondiscriminatory in terms of a specified list of standards.

As we show below, such support mechanisms are required as a part of the unbundling and resale obligations themselves, as part of the nondiscrimination provisions of the unbundling and resale sections of the Act, and as part of the ILECs' obligations to unbundle access to network elements.

B. Practical Operational Difficulties Can Effectively Block Competition.

Whether they are relying upon unbundled network elements or service resale, all competing carriers will be dependent on the ILECs for efficient customer provisioning, and access to customer data for billing and servicing. However, operational interface standards, to the extent they exist at all today, are extremely limited. Moreover, the ILECs have powerful disincentives to put such interfaces in place in the absence of clear rules requiring them

The availability of automated, nondiscriminatory interfaces is critical for resale of local service. For a local reseller to be competitive, it must be able to seamlessly deliver new services, add features and bill as if it owned the facilities.

For example, suppose that while the ILEC enters its own service orders electronically, it requires the competing carrier to submit such orders manually via a multiple-page form faxed or electronically mailed to the ILEC. This is exactly what happened in Rochester, New York, when Rochester Telephone began offering its retail services to competing carriers for resale as part of its Open Market Plan. In addition to being discriminatory and in violation of the Act, this manual process creates extra steps and delay and the opportunity for human error, resulting in customer dissatisfaction. In addition, while the ILEC can schedule service commencement and issue new phone numbers during the initial contact

with its customers, the competing carrier, at a minimum, is required to put its customers on hold while it calls the ILEC to obtain the scheduling information and request a telephone number. In some cases, the competing carrier is required to hang up and call the customer back with scheduling information and its assigned phone number. The poorer quality of service will be viewed by customers as the fault of the competing carrier, not the ILEC. The consequences for the competing provider are obvious -- much less ability to attract potential customers from the more user-friendly ILEC. In fact, AT&T has experienced precisely these problems in its effort to provide local service in Rochester. 57/

C. Sections 251(c)(3) and 251(c)(4) Themselves Incorporate a Requirement That ILECs Implement Automated, Nondiscriminatory Operational Support Mechanisms.

Section 251(c)(3) requires that unbundled elements be provided at nondiscriminatory rates, terms, and conditions. Section 251(c)(4) requires that services offered for resale be provided free of any "unreasonable or discriminatory conditions or limitations."

At a minimum, these nondiscrimination provisions mean that an ILEC cannot discriminate against competitors in favor of its own retail operations. Consequently, in order to meet their nondiscrimination obligation, ILECs must provide electronic interfaces for ordering, provisioning, maintenance and billing at the same level of quality, and within the same intervals, as they do for their own end-user customers. Until these automated systems are in place, proven workable and shown to be nondiscriminatory in practice. Sections 251(c)(3) and 251(c)(3) will

57/ AT&T discusses its experience in Rochester in its comments filed today in this proceeding.

not have been satisfied. 58/ The competitive checklist of Section 271(c)(2)(B)(i) therefore cannot be deemed to have been met.

We identify in Appendix D the operational mechanisms and standard interfaces that must be put in place under Section 251 for service resale. Many of these requirements also are applicable to unbundled elements. 59/

Electronic interface capabilities would allow competitors to enter customer trouble reports, obtain repair commitments, schedule appointments for customer site visits, and receive notification of service-affecting network conditions on as timely a basis as the ILEC. These are significant issues from the customer's perspective. Without these interfaces, customers who choose a competing carrier are disadvantaged in terms of their ability to request service, and to schedule and monitor installation and repair services from that carrier. Similarly, customers of

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58/ Such standards should include: (1) mechanized interface standards and access to LEC ordering systems, LEC phone number administration systems, and LEC network provisioning systems, which perform service condition monitoring, repair, work completion status and service suspension functions; (2) the right to purchase and receive local usage records on a daily basis; (3) equal access to customer data, including the customer's current services, such as call waiting, and the customer's credit and payment history; (4) mechanized standard interface for updating the local customer directory; (5) listing of the competing local service provider as a local provider in the local phone book; (6) competing carrier ownership of the telephone line number (TLN) and "write access" to the card verification database (today this is the Line Information Data Base - LIDB); (7) rules for handling customer misdirected service calls (e.g., if a competitor's customer mistakenly thinks it uses the services of the ILEC and calls the ILEC for servicing, the ILEC should not use the opportunity to market to the competitor's customer, and vice versa). See Appendix D, infra.

59/ We emphasize that there are specific requirements that are unique to unbundled elements that are not reflected in the appendix. We also stress that the ILECs should not delay in providing unbundled elements and resale while they develop the automated interfaces. They must provide both immediately, and in the meantime develop the necessary interfaces and other support mechanisms as quickly as possible.

competing carriers may not be informed of network interruptions to their service. It is critical for competition that all processes, whether performed by the ILEC for its customers or for the customers of the requesting carrier, be provided seamlessly so that -- insofar as an ILEC-provided element or retail service is involved -- the competitor's customer is unable to perceive a difference between the service provided by the ILEC and that provided by the competitor.

Interexchange carriers also will continue to be dependent upon the ILEC for vital billing information. To insure continued long distance competition, it is critical that the Commission require the provision of timely and accurate mechanized Customer Account Record Exchange (CARE) by all local service providers, including the ILEC, to all interexchange carriers. The information contained in CARE includes each customer's billing telephone number, working telephone number, billing address and service address. 60/ Interexchange carriers will continue to be dependent on customer information from all local providers, including the ILECs, in order to know who is accessing their networks. 61/ **[¶ 107]**

Additionally, interexchange carriers must be able to access customer information, regardless of the customer's listed or published status, in order to bill casual users of their networks. A standard interface exists today that permits the interexchange carriers to request billing name and address (BNA) information to complete the billing process for its customers. This interface must be supported by

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60/ Today, there are approximately 4.7 million monthly CARE transactions and 56 million yearly CARE transactions.

61/ The cost of providing these required interfaces should be borne by the ILEC as a cost of complying with its nondiscrimination obligations under the Act. Moreover, because all local service customers will benefit from the introduction of local service competition, it is appropriate that the costs to develop such interfaces be recovered across the general customer base

all local exchange companies when an interexchange carrier requests this information to bill for usage placed on its network.

Further, Primary Interexchange Carrier (PIC) processing must be provided by a neutral process and proprietary data must be protected. Today, customers request their long distance provider via the ILEC. In the future, where the ILEC can also offer long distance services, PIC processing must be provided by a neutral process driven by market forces and not restricted by the ILEC's limitations or restrictions of PIC choice. Without such a standard, customers may be disadvantaged by losing some or all choices for long distance services, thereby thwarting competition.

Interexchange carriers also must be able to purchase recording and billing services when Automatic Number Identification (ANI) is not sent to the interexchange carrier's switch. Without this provision, interexchange carriers will not be able to bill customers served by switches that do not provide ANI. The absence of ANI or recording and billing information clearly limits the interexchange carrier's ability to be competitive and to settle accounts with customers.

Carriers purchasing unbundled local switching will require access to the billing data that they will need to bill interexchange carriers for access. If this data is not currently available, ILECs must be required to modify their CABS billing systems in order to provide the data.

Finally, in addition to providing automated, nondiscriminatory operational support in connection with their provision of unbundled network elements, ILECs must provide access to databases and signaling systems as unbundled elements. 62/ Thus, the Commission properly concludes that requiring the incumbent LECs to provide such elements on an unbundled basis "is consistent

62/ 47 U.S.C. § 153(a)(45).

with the intent of the 1996 Act." 63/ Additionally, the Commission asks for comment on whether there are other network elements that it had not previously identified. Specifically, the Commission correctly notes that the Act requires the separate unbundling of "subscriber numbers" and "information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 64/ These also must be provided, both in connection with unbundled elements and service resale generally, and as unbundled elements in their own right. **[¶¶ 107, 116]**

IX. THE FCC, AS WELL AS STATE COMMISSIONS, WILL HAVE A CRITICAL ROLE IN INTERPRETING AND ENFORCING THE SECTION 251 AND 252 RULES.

[Notice, Sections I.B., II.A., and III.A., B. ¶¶ 14-41, 264-272]

Adoption of strong, uniform national rules to implement Sections 251 and 252 is the necessary first step on the road to development of a competitive full-service telecommunications market. But putting those rules into place, and doing so correctly, will be an enormous and complex task. Disputes doubtless will arise about the meaning of the rules the FCC adopts, no matter how carefully those rules are drafted. State commissions will apply and interpret these rules in the first instance, but it is essential that the FCC have the ability to ensure that the rules are applied in a consistent and pro-competitive manner. The FCC must make it clear in its final order in this proceeding that it, as well as the state commissions,

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63/ See Notice, at ¶ 107. The Commission also cites the statement of Senator Pressler who noted that "access to signaling and databases is important if you are going to compete and get into the market." Id. at n 142, citing 141 Cong. Rec. S8163 (June 12, 1995).

64/ Id. at ¶ 116.

will have an important role in interpreting, implementing and enforcing the Section 251 and 252 regulations.

As the FCC itself recognized, this agency will continue to have a direct role in implementation of the Act. First, if a state is found to have failed to act to carry out its Section 252 responsibilities, the FCC is required to arbitrate disputes and to otherwise take on the state role to set rates and to establish the other terms and conditions for local entry under Sections 251 and 252. See Notice, ¶ 265, citing 47 U.S.C. 251(e)(6). Second, the FCC must determine whether a Bell operating company has satisfied the requirements of Sections 251, 252, and the implementing regulations before granting an application for interLATA entry. See **Notice, ¶ 32. In** these proceedings, the FCC will directly interpret, apply, and enforce Sections 251 and 252 and the FCC regulations adopted under those rules. **[¶¶ 32, 265-267]**

The FCC also will have a role in interpreting Sections 251 and 252 and the implementing rules through its primary jurisdiction in connection with federal court appeals of state commission decisions under Section 252(f). Under the doctrine of primary jurisdiction, federal courts may refer issues involving interpretation of the Communications Act or FCC rules to the FCC to obtain the agency's views. 65/ This doctrine has served an important role in ensuring that

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65/ See Reiter v. Cooper, 507 U.S. 258, 268-69 (1993) (requiring court to use its "discretion either to retain jurisdiction (i.e., to stay the case pending resolution by the agency) or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice"); United States v. Western Pac. R.R. Co., 352 U.S. 59, 64 (1956) (doctrine of primary jurisdiction applies where enforcement of claims "requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body"); Allnet Communications Service, Inc. v. National Exchange Carrier Ass'n Inc., 965 F.2d 1118 (D.C. Cir. 1992) (FCC had primary jurisdiction where judicial resolution of carrier's claims would have preempted FCC from implementing what amounted to policy decisions on universal service and technical questions on the adequacy of filed tariffs).

federal court decisions are consistent with FCC statutory interpretation and FCC policy. In the context of implementation of the 1996 Act, the doctrine of primary jurisdiction will be critical to ensuring consistency of interpretation and application of the FCC's rules and of the Act itself. We believe that the FCC has primary jurisdiction in connection with judicial review of state commission determinations under Section 252(f). **[¶¶ 36, 38, 41]**

The FCC also retains an important role in enforcing the Act via its Section 208 jurisdiction to consider complaints against common carriers alleging violations of the Act. 66/ Nothing in the 1996 Act changes the FCC's authority to consider such complaints or the rights of aggrieved parties to seek enforcement of the Act via the complaint process. As Section 601(c)(1) of the 1996 Act makes plain, "[t]his Act and the amendments made by the Act shall not be construed to modify, impair, or supersede Federal, Sate, or local law unless expressly so provided in such Act or amendments." Nothing in the Act expressly or impliedly repeals Section 208. **[¶ 41]**

It would be contrary to the scheme of the 1996 Act, moreover, to read such a repeal into the new law. The enforcement provisions of Section 208 will be critical to ensuring that the protections and requirements of the Act become reality. As discussed above in Sections I and II, incumbent LECs have powerful incentives to delay or block competition, and have substantial ability to do so in light of the dependence of ILEC competitors on access to the incumbent LEC network to provide competing service. While state commissions surely will be committed to the goal of competition, it is important that there be an avenue for potential

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66/ Federal courts also retain jurisdiction to consider complaints for damages under Section 207.

competitors to obtain relief from the FCC under the Act. 67/ In particular, the FCC complaint process provides an avenue to ensure consistency of application of the rules under the Act, as well as more rapid rulings that can be applied nationwide. **[¶ 41]**.

In sum, the FCC must make clear that it will retain an important role in implementing and enforcing the Act and the regulations adopted thereunder.

67/ Many if not most state commissions have complaint procedures in place as well, and these also are available to parties. But it is not clear that these complaint procedures will in every case be adequate to provide the relief competitors may need, or that state laws confer jurisdiction to consider every type of complaint that might be brought, including complaints regarding interstate services. Finally, state and federal complaint procedures have long coexisted, and there is no reason why they should not continue to do so.

Conclusion

The Commission should adopt strong, uniform pro-competitive rules to guide it, the state commissions and the negotiation process in implementing and enforcing the requirements of Sections 251 and 252 of the Act. The Commission's rules must be crafted to ensure that competitors will have access to the incumbent LEC network on the same basis as the ILEC itself, so that consumers everywhere will be able to choose from a wide range of telecommunications services and service providers.

Respectfully submitted,

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Counsel for Telecommunications
Carriers for Competition

Dated: May 16, 1996

APPENDIX A

AT&T Status Report
on Negotiations with
Bell Atlantic-MD

May 6, 1996
Maryland Public Service Commission
Case No. 8721

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May 6, 1996

VIA FACSIMILE

Daniel P. Gahagan
Executive Secretary
Public Service Commission
of Maryland
6 St. Paul Centre
Baltimore, Maryland 21202-6806

RE: Case No. 8721

Dear Mr. Gahagan:

In response to Order No. 72573 issued April 29, 1996, AT&T submits herewith its report on the progress of negotiations with Bell Atlantic-Maryland, Inc. ("BA-MD", "Bell Atlantic" or "Bell") for interconnection, services and network elements pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

Very truly yours,

Wilma R. McCarey

Wilma R. McCarey

Enclosures

cc: Parties of Record